



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,018	08/18/2003	Karen G. Klaers	ECO0006/US/3 (ECOLAB008US)	2964
74263	7590	10/31/2007	EXAMINER	
Intellectual Property Law Collaborative PO Box 59 Marine on St. Croix, MN 55047			DELCOTTO, GREGORY R	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			10/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/643,018

Applicant(s)

KLAERS ET AL.

Examiner

Gregory R. Del Cotto

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 8/8/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-28,30,32,34-37,39,40,42,44-48 and 50-62 is/are pending in the application.

4a) Of the above claim(s) 59-62 is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 25-28,30,32,34-37,39,40,42,44-48 and 50-58 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 25-28, 30, 32, 34-37, 39, 40, 42, 44-48, and 50-62 are pending.

Applicant's arguments and amendments filed 8/8/07 have been entered. Claims 1-24, 29, 31, 33, 38, 41, 43, and 49 have been canceled.

Newly submitted claims 59-62 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 59-62 (Group II) are drawn to a process for producing a packaged, solid detergent composition which is materially different and patentably distinct from the solid detergent composition as recited by claims 25-28, 30, 32, 34-37, 39, 40, 42, 44-48, and 50-58 (Group I). The composition of Group I can be made by a materially different method such as by kneading together the required components of the instant claims followed by compaction or granulation. Furthermore, the invention of Group II is classified in 510/446 while the invention of Group I is classified in 510/235. Thus, the invention of Group II would require a separate search due to its separate classification, thereby placing an undue burden on the Examiner.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 59-62 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/8/07 has been entered.

Objections/Rejections Withdrawn

The following objections/rejections set forth in the Office action mailed 4/5/07 have been withdrawn:

The rejection of claim 32 under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974) or WO 99/02638 as applied to the rejected claims above, and further in view of Rolando et al (US 5,876,514) has been withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 57 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 57, this claim is vague and indefinite in that it lists "coco monoethanolamide" as an amphoteric surfactant. This compound is not an amphoteric surfactant but is well known to those of ordinary skill in the art as a nonionic

compound. Clarification is required. Note that, claim 58 has also been rejected due to its dependency on claim 57.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

Art Unit: 1796

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 25, 26, 28, 30, 39, 40, 42, 44-46, 50, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974).

Menke et al teach block-form cleaners for flush toilets which consist of at least two masses of different composition, one of the masses being at least partly surrounded

by the other masses. See Abstract. Surfactants may be used in the compositions and include anionic, nonionic, cationic, and amphoteric surfactants. Suitable anionic surfactants include the alkyl benzene sulfonates containing C9-C15 as alkyl groups, etc. Suitable nonionic surfactants include adducts of 1 to 100 moles of ethylene oxide with 1 mole of an aliphatic or alkyl aromatic compound essentially containing 10 to 20 carbon atoms from the group of alcohols, alkyl phenols, alkyl glucosides, etc. See column 4, lines 1-35.

Additionally, erosion regulators may be used in the compositions which may control the consumption of the cleaning blocks in use in such a way that they remain effective to the end of their intended useful life. Preferred regulators are solid long-chain fatty acids, polyethylene glycols such as those with molecular weights of 1,500 to 50,000, etc., which are present in amounts from about 2% by weight to about 15% by weight. See column 7, lines 20-40. Also, the compositions may contain inorganic salts which improve the consistency, erosion behavior, and homogeneity of the blocks. Additionally, the salts can enhance the cleaning effect of the surfactants and act as hardness-binding agents. See column 7, lines 20-69. Disinfectants may be used in the compositions including sodium percarbonate, sodium perborate, etc. Note that, the Examiner maintains that percarbonates and perborates also function as bleaching agents. See column 5, lines 1-25. Complexing agents may also be used and include aminopolycarboxylic acid, polyphosphonic acid, etc. See column 5, line 60 to column 6, line 20. Note that, the Examiner asserts that the teachings of Menke et al would suggest compositions having the same pH of the composition in aqueous solution as

recited by the instant claims because Menke et al suggest compositions containing the same components in the same amounts as recited by the instant claims.

Note that, with respect to instant claim 25, this is a product by process claim; even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Note that, the Examiner asserts that the teachings of Menke et al would suggest compositions having the same properties as recited by the instant claims because Menke et al suggest compositions containing the same components in the same components as recited by the instant claims.

Menke et al do not teach, with sufficient specificity, a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims, with a reasonable expectation of success

and similar properties with respect to other disclosed components, because the broad teachings Menke et al suggest a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

Claims 25, 26, 28, 30, 39, 40, 42, 44-48, 50, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO99/02638.

'638 teaches detergent compositions, including laundry, fabric care, dishwashing, and hard surfaces cleaner compositions which provide effective and efficient cleaning of everyday body stains and/or soils and provide sanitization of the treated surfaces. See Abstract. Suitable surfaces include those such as bathtubs, toilet bowl, and dishware. See page 2, lines 1-5. The detergent compositions can be in the form of a liquid, paste, gel, bars, tablets, etc. See page 8, lines 2-35. Suitable bleaching agents include percarbonates, perborates, persulfates, etc. See page 18, lines 1-10. The detergent compositions generally comprise a surfactant system wherein the surfactant can be selected from the group consisting of nonionic, anionic, cationic, or ampholytic surfactants. See page 29, lines 30-40. The surfactant is typically present at a level of from 0.1 to 60% by weight. Suitable nonionic surfactants include the condensation products of primary and secondary aliphatic alcohols with from about 1 to about 25 moles of ethylene oxide, alkylpolysaccharides having from about 10 to about 16 carbon atoms, etc. See page 30, lines 1 to page 31, line 50. Suitable anionic surfactants

Art Unit: 1796

include linear alkyl benzene sulfonates, etc. Suitable starting materials would include natural fatty substances as derived from tallow, palm oil, etc. See page 33, lines 30-40.

The detergent compositions may also contain one or more iron and/or manganese chelating agents including amino carboxylates, amino phosphonates, nitrilotriacetates, etc. See page 47, lines 10-40. Suds suppressors such as silicones and silica-silicone mixtures may also be used in the compositions. See page 48, lines 15-40. Other components may also be used including soil-suspending agents, optical brighteners, abrasives, etc., may be used in the compositions. See page 49, lines 10-40. Suitable polymeric materials suitable as soil-suspending agents include polyethylene glycol having a molecular weight from 1000 to 10,000. See page 50, lines 10-30. The method of cleaning is preferably carried out at 5 degrees Celsius to 95 degrees Celsius and the pH of the treatment solution is preferably from 7 to 12. See page 59, lines 1-10. Note that, the solid detergent compositions as taught by '638 may include water as an additional component. See Example 4.

Note that, with respect to instant claim 25, this is a product by process claim; even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Note that, the Examiner asserts that the teachings of '628 would suggest compositions

Art Unit: 1796

having the same properties as recited by the instant claims because '638 suggests compositions containing the same components in the same components as recited by the instant claims.

'638 does not teach, with sufficient specificity, a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar properties with respect to other disclosed components, because the broad teachings of '638 suggest a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974) or WO99/02638 as applied to the rejected claims above, and further in view of Kott et al (US 6,303,556).

Menke et al or '638 are relied upon as set forth above. However, neither reference teaches the use of a magnesium salt of alkyl benzene sulfonate in addition to the other requisite components of the composition as recited by the instant claims.

Kott et al teach hard surface cleaning compositions which include modified alkylbenzene sulfonate surfactant mixtures. See Abstract. The alkylbenzene sulfonate surfactants can be neutralized with an suitable alkali. Thus, the neutralization step can be conducted using alkali selected from sodium, potassium, ammonium, magnesium, and substituted ammonium alkalis and mixtures thereof. Potassium can assist solubility, magnesium can promote soft water performance, and substituted ammonium can be helpful for formulating specialty variations of the of the instant surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a magnesium salt of alkyl benzene sulfonate in the cleaning composition taught by Menke et al or '638, with a reasonable expectation of success, because Kott et al teach the equivalence of magnesium alkylbenzene sulfonate to sodium alkylbenzene sulfonate as a cleaning surfactant, and that the use of a magnesium salt of alkyl benzene sulfonate promotes soft water performance in a similar cleaning composition and further, Menke et al or '638 teach the use of alkylbenzene sulfonate surfactants in general. Note that, the Examiner asserts that the teachings of Menke et al or '638, both in combination with Kott et al, would suggest compositions having the same molar ratio of sodium salt to magnesium salt as recited by instant claims 36 and 37.

Claims 27 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/02638 as applied to the rejected claims above, and further in view of Surutzidis et al (US 5,858,959).

'638 is relied upon as set forth above. However, 638 does not teach use of an inorganic magnesium salt in addition to the other requisite components of the composition as recited by instant claims 27 and 32.

Surutzidis et al teach glassy particles containing agents useful for laundry and cleaning products and laundry and cleaning products containing these glassy particles. See Abstract. The laundry or cleaning compositions contain a glassy particle comprising various detergent ingredients and at least one nonsoap detergent active material. See column 3, lines 40-65. Suitable additional ingredients include magnesium salts such as magnesium chloride, magnesium sulfate, etc., which may be used in amounts from 0.1% to 2% and provide additional suds and to enhance grease removal performance. See column 39, lines 1-10.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an inorganic magnesium salt in the cleaning composition taught by '638, with a reasonable expectation of success, because Surutzidis et al teach the use magnesium sulfate in a similar solid detergent composition provides enhanced sudsing and grease removal properties and further, these properties would be desirable in the cleaning compositions taught by '638.

Claims 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974) or WO99/02638 as applied to the rejected claims above,

Art Unit: 1796

and further in view of Feist et al (US 6,329,335), Fry et al (US 5,225,100), or Davies et al (US 5,658,874).

Menke et al or '638 are relied upon as set forth above. However, Menke et al or '638 do not teach the use of water in the specific amounts in addition to the other requisite components of the composition as recited by the instant claims.

Feist et al teach a process for the production of detergent tablets containing surfactants, builders, and optionally other detergent ingredients. See Abstract. Additionally, water may also be used in the detergent tablets and the water may either be pure water or an aqueous solution of active ingredients and auxiliaries. See column 14, lines 25-60 and column 5, lines 15-30.

Davies et al teach detergent tablets, compacted from detergent powder containing detergent actives and detergency builder. See Abstract. A tablet is made by compacting detergent powders containing 4.3% water, etc. See column 8, line 44 to column 9, line 25.

Fry et al teach a tablet of compacted detergent powder comprising an anionic surfactant, a detergency builder and optionally, other detergent ingredients. See Abstract. A tablet is made from detergent powder wherein the powder contains 10.4% water, etc. See column 10, lines 25-50.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use water as a component of the compositions taught by Menke et al or '638, with a reasonable expectation of success, because Feist et al, Davies et al, or Fry et al teach the use of water in a similar detergent tablet compositions and

Art Unit: 1796

further, water is generally added to detergent tablets in combination with surfactants, builders, etc.

Claims 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974) or WO99/02638 as applied to the rejected claims above, and further in view of Stamm (US 6,057,281).

Menke et al and '638 are relied upon as set forth above. However, neither reference teaches the use of cocoamidopropyl betaine in addition to the other requisite components of the composition as recited by the instant claims.

Stamm teaches a tableted household cleaning composition for cleaning glass and other hard surfaces. The cleaning composition is in tablet form and includes an acidic component selected from the group consisting of carboxylic acid, their salts and mixtures thereof; a basic component; and polyvinyl alcohol. See Abstract. The compositions may also contain surfactants such as amphoteric surfactants. Suitable amphoteric surfactants include water-soluble betaine surfactants such as lauramidopropyl betaine and cocomido betaine. See column 4, lines 45-69. Note that, the Examiner asserts that this teaching of lauramidopropyl betaine and "cocomido betaine" would suggest cocoamidopropyl betaine as recited by the instant claims. The tableted household cleaner can be used to clean glass and other hard surfaces such as countertops and floors, surfaces in kitchens and bathrooms, etc. See column 6, lines 1-15.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cocoamidopropylbetaine surfactant in the compositions

Art Unit: 1796

taught by Menke et al or '638, with a reasonable expectation of success, because Stamm teaches the use of cocoamidopropylbetaine surfactant in a similar tablet detergent compositions and further, Menke et al or '638 teach the use of amphoteric surfactants in general.

Response to Arguments

With respect to Menke et al or Herbots et al ('638), Applicant states that both references encompass a significantly large number of embodiments and the Examiner has not established a prima facie case of obviousness; any such case is based upon impermissible hindsight. Additionally, in the alternative, Applicant states that even if a prima facie case of obviousness has been established, the synergistic effects that can be seen in a detergent composition comprising an alkali metal and an alkaline earth metal in further combination with an alkyl polyglycoside or an amphoteric surfactant would be sufficient to rebut such a case. In response, note that, the Examiner maintains that the teachings of Menke et al or Herbots et al are **not limited** to the preferred embodiments and that while both Menke et al or Herbots et al disclose a large number of combinations of components, one of ordinary skill in the art would be motivated to formulate compositions containing the same components in the same amounts as recited by the instant claims from the teachings of Menke et al or Herbots et al. For example, Menke et al teach a solid block composition containing the same anionic and nonionic surfactants as recited by the instant claims in amounts from about 7 to about 85% by weight in each of the two masses making up the composition (See column 4, lines 1-69 of Menke et al). This amount of surfactant as disclosed by Menke

Art Unit: 1796

et al overlaps with the broad ranges listed for each surfactant component recited by the instant claims. Furthermore, the instant claims simply recite "solid" composition which is open to any type of solid block such as a mono- or dual layered tablet, etc. Thus, the Examiner maintains that the broad teachings of Menke et al or Herbots et al are sufficient to render the instant claims obvious under 35 USC 103.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to Herbots et al, Applicant states that those of ordinary skill in the art would not be motivated to modify the teachings of Herbots et al to arrive at the present invention because each and every embodiment of Herbots et al detergent compositions requires at least the presence of an oxygenase, and desirably at least one other enzymatic bleaching system. In response, note that, the instant claims recite "comprising" which would not exclude the inclusion of oxygenase and enzymatic bleaching system as required in the composition taught by Herbots et al.

Additionally, with respect to Menke et al and Herbots et al, Applicant states that these references are drawn to toilet cleaners and laundry and automatic warewashing

Art Unit: 1796

compositions, respectively, while the instant claims are drawn to compositions for the manual washing of ware. In response, note that, the Examiner maintains that "for the manual washing of ware" as recited by the instant claims is simply an intended use of the claimed composition and is not read as a patentably limitation. Note that, if the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention and the preamble merely states, for example, the purpose or intended use for the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. Pitney Bowes, Inc. v. Hewlett-Packard Co., 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999); Kropa v. Robie, 187 F.2d at 152, 88 USPQ2d at 480-81. See MPEP 2111.02. Thus, the Examiner maintains that both Menke et al and Herbots et al suggest compositions which are the same as recited by the instant claims.

Also, note that, the Examiner asserts that data presented in the specification is not sufficient to show the unexpected and superior properties of the claimed invention and place the instant claims in condition for allowance. First, note that, the data presented is not commensurate in scope with the instant claims. For example, the instant claims recite broad amounts and types of alkyl benzene sulfonate, neutralizing agent, alkyl polyglycoside surfactant, alcohol ethoxylate surfactant, and polyethylene glycol while the specification provides data with respect to only several specific combinations of the required components of the composition, which is not commensurate in scope with the instant claims. Additionally, it is unclear from the data presented in the specification where an actual comparison is made showing the

Art Unit: 1796

unexpected and superior properties of the claimed invention in comparison to compositions falling outside the scope of the instant claims; it appears that most of the data shows results and preparation of compositions according to the claimed invention. Applicant has merely stated in the response that Examples 5 and 6 show superior grease removal properties but does not describe the data sufficiently such that it is clear how these grease removal properties are both superior and unexpected. Furthermore, the Examiner asserts that the data presented does not provide any unexpected results but merely shows what one of ordinary skill in the art would reasonably expect from the teachings of the prior art. For example, Surutzidis et al, as stated above, teaches that the use of magnesium salts, such as magnesium sulphate, in a solid detergent composition provides improved sudsing and grease removal properties which is a property demonstrated by the data listed in the instant specification. Thus, this property of the composition as demonstrated by the data is not unexpected.

With respect to the rejections under 35 USC 103 using Menke et al or Herbots et al, both in combination with Knott et al, Applicant once again states that Knott et al fail to remedy the shortcomings of Menke et al or Herbots et al and thus, these combinations of references do not suggest the compositions as recited by the instant claims. In response, note that, as set forth above, the Examiner maintains that the teachings of Menke et al or Herbots et al are sufficient to suggest a composition containing the same components in the same amounts as recited by the instant claims. Knott et al is a secondary reference relied upon for its teaching of a magnesium salt of alkyl benzene sulfonate. The Examiner maintains, as stated previously, that one of

Art Unit: 1796

ordinary skill in the art would clearly have been motivated to use to use a magnesium salt of alkyl benzene sulfonate in the cleaning composition taught by Menke et al or '638, with a reasonable expectation of success, because Kott et al teach the equivalence of magnesium alkylbenzene sulfonate to sodium alkylbenzene sulfonate as a cleaning surfactant, and that the use of a magnesium salt of alkyl benzene sulfonate promotes soft water performance in a similar cleaning composition and further, Menke et al or '638 teach the use of alkylbenzene sulfonate surfactants in general.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.


Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1796

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
October 23, 2007